Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	WT Docket No. 12-269
Policies Regarding Mobile Spectrum Holdings	)	
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COMMENTS OF THE WRITERS GUILD OF AMERICA, WEST, INC.

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I. Introduction

Writers Guild of America, West, Inc. (WGAW) is pleased to submit the following comments in response to the Federal Communication Commission's (FCC) Noticed of Proposed Rulemaking, "Policies Regarding Mobile Spectrum Holdings," released on September 28, 2012, WT Docket No. 12-269.

WGAW is a labor organization representing more than 8,000 professional writers working in film, television and new media, including news and documentaries. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, "WGA"). Increasingly, video programming produced for initial distribution over the Internet is also written by WGA members.

The WGAW is an advocate for a competitive media marketplace that allows diverse stories created by writers an opportunity to reach the public. Robust competition in new video delivery markets such as wireless broadband is necessary to serve the public interest and increase voices in the media. The WGAW has reported to the Commission the detrimental impact that consolidation on traditional media platforms has had on independent and diverse content.[1] The rise of the Internet as a video distribution platform represents the reintroduction of competition and independent programming to the entertainment industry with original, professional

[1] See Comments of the Writers Guild of America, West, Inc., *In the Matter of Annual Assessment of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203 and Comments of the Writers Guild of America, West, Inc., *In the Matter of 2010 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 2020 of the Telecommunications Act of 1996*, MB Docket No. 09-182 and *Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket No. 07-294, March 5, 2012, and Comments of the Writers Guild of America, West, Inc., *In the Matter of Annual Assessment of Competition in the Market for Delivery of Video Programming*, MB Docket No. 07-269, June 8, 2011, and Comments of the Writers Guild of America, West, *In the Matter of Applications of Comcast Corporation, General Electric and NBC Universal, Inc., for Consent to Assign Licenses or Transfer Control of Licenses*, MB Docket No. 10-56, June 21, 2010, and Reply Comments of the Writers Guild of America, West, *In the Matter of Preserving the Open Internet Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, April 26, 2010.

programming exhibited across a growing number of online sites and services including AOL, Yahoo!, Hulu, YouTube and Netflix. As such, online video represents one of the few forms of competition to the current oligopoly in the video programming and distribution market.

The increase in competition and diversity in video programming enabled by Internet distribution must be protected. Developments in the wired broadband market suggest further action is necessary to promote competition and allow consumers to realize the public interest benefits of Internet-delivered video. While broadband provides an alternative video delivery platform, it is controlled by the same multichannel video programming distributors (MVPDs) that provide cable television service. To limit the competitive threat of online video, many MVPDs have implemented data caps that limit Internet use.[2] MVPDs are able to institute such caps because of the concentrated nature of wireline Internet. Currently, the four largest high-speed Internet providers account for 67% of customers.[3]

Given the market concentration in wired broadband services and the high entry barriers that limit the potential for new entrants, wireless broadband should develop as a competitive alternative. However, two of the top four high speed data wireline providers are AT&T and Verizon, both of which also dominate the wireless industry, accounting for 63% of the market.[4] The wireless broadband market is even more concentrated and controlled by firms that have an incentive to reduce mobile broadband's competitive threat. As a result, current wireless data plans offered by Verizon and AT&T provide such meager amounts of data or charge such high prices that mobile distribution is essentially foreclosed as a video platform. While these wireless

[2] Stacey Higginbotham, "Which ISPs are capping your broadband, and why?*"* *GigaOm*, October 1, 2012, http://gigaom.com/2012/10/01/data-caps-chart/.
[3]SNL Kagan, "2012 Q2 High Speed Data Subscribers," http://www.snl.com.
[4] SNL Kagan, "Wireless Industry Benchmarks – Wireless Subscribers 2011 Q4," http://www.snl.com.

providers advertise 4G and LTE networks, consumers are effectively unable to use this technology to watch video because of existing data caps and pricing.

Increased competition is necessary to further the development of a robust wireless broadband market. The Commission has the ability to enhance competition through its spectrum holding policies. Limits on the amount of spectrum any one company may hold are necessary because spectrum is required to offer competitive wireless phone and data services. Integral to limits on spectrum holdings must be recognition that not all spectrum is created equal. As noted in the *NPRM*, lower frequency spectrum has more favorable propagation characteristics that can result in lower infrastructure costs and better service, yet the Commission's current spectrum screen process does not account for such differences. Therefore, appropriate weighting of spectrum to include qualitative differences is the critical first step towards a spectrum policy that promotes competition and limits control of the most valuable spectrum by the top firms within the industry. We urge the Commission to develop a system that weights valuable spectrum and limits the amount of such spectrum that any one company can control.

II. Spectrum Policy Affects Competition

In 1994 the majority of consumers had a choice between only two mobile providers. The Commission recognized the concentration in the mobile industry and implemented a spectrum cap to encourage new carriers to enter the industry. In the 1996 and 1998 Biennial Review of the Spectrum Aggregation Limits, the Commission found that the market was becoming more competitive and voted to retain the cap. By the 2000 Biennial Review, 95% of US residents lived in counties served by three or more mobile providers and 75% of residents lived in counties served by five or more providers. Overall there were six nationwide providers—AT&T, Sprint,

Verizon, Voicestream, Cingular and Nextel. As a result of this competition, prices for mobile phone service fell.[5]

Unfortunately, in 2001 the Commission voted to sunset the spectrum cap just as the market was seeing its positive effect.[6] Between 2001 and 2011, there were a number of mergers that increased consolidation in the marketplace. Significantly, Nextel and Sprint merged, AT&T and BellSouth merged, and Cingular and AT&T merged. By 2011, four nationwide providers—AT&T, Verizon, T-Mobile and Sprint—accounted for 90% of the nation's mobile wireless subscribers, down from six national providers in 2000.[7] While this consolidation has reduced competition, 94% of the country has access to at least four wireless voice providers.[8] However, consumers have fewer choices for mobile broadband coverage. In 2010, only 67.8% of the population was served by four or more mobile broadband providers.[9]

It is evident that relaxing spectrum limits has facilitated market concentration among the industry's largest firms. Removing the spectrum cap has also allowed the larger carriers to use their size and incumbency advantage to win spectrum at auction. As the Public Interest Spectrum Coalition noted in 2008, making more spectrum available through public auctions will not make the market any more competitive unless there are constraints to limit the amount of spectrum the

[5] In 2000 the cellular component of the CPI fell 12.3% while the overall CPI increased 3.4%.
[6] FCC, *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services,* WT Docket 01-14, Report and Order ¶1-2.
[7] FCC, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Services*, 15th Report, WT Docket 10-133, 2011, Table 4.
[8] FCC, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Services*, 15th Report, WT Docket 10-133, 2011, Table 5.
[9] FCC, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Services*, 15th Report, WT Docket 10-133, 2011, Table 7.

larger carriers can accumulate.[10] In the 2008 spectrum auctions Verizon and AT&T were able to win approximately 60% of MHz-POPs, to the detriment of new competition.[11]

III. Competition is Needed in Mobile Broadband

The growth of wireless telephony services has undoubtedly been a positive consumer development. The ability to make and receive phone calls from anywhere is an innovation that has changed the way people live. Mobile phones have provided important intermodal competition with landlines phones. CTIA, the Wireless Association, reports that as of June 2011 almost 32% of U.S. households were wireless only.[12] Robust mobile phone competition led to falling voice rates.[13] The WGAW would like to see such positive results from competition in mobile broadband.

Mobile broadband is the next frontier for the wireless industry. The introduction and adoption of smartphones and, in particular, tablets have made mobile web browsing and video viewing something consumers demand. Currently 64 million consumers own some form of tablet device, and smartphone penetration has reached 47% of US mobile device owners, or 110 million people.[14] These new devices can increase video consumption, which benefits content creators seeking an audience, and consumers who now have increased flexibility to choose when and where they want to watch video. ABC, CBS, FOX and NBC have created free mobile apps

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[10] Comments of the Public Interest Spectrum Coalition, RM 11498, 2008.
[11] Bryan Gardiner, "In Spectrum Auction, Winners Are AT&T, Verizon and Openess," *Wired*, March 20,2008, http://www.wired.com/business/2008/03/fcc-releases-70/, and *Rural Telecommunications Group, Inc. Petition for Rulemaking to Impose a Spectrum Aggregation Limit on all Commercial Terrestrial Wireless Spectrum Below 2.3 GHz*, RM-11498 (filed July 16, 2008).
[12] CTIA, "The U.S. Wireless Industry Overview," April 25, 2012, p. 24, http://files.ctia.org/pdf/042412_-_Wireless_Industry_Overview.pdf.
[13] FCC, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Services*, 15th Report, WT Docket 10-133, 2011, Table 20.
[14] SNL Kagan, "U.S. Tablet Projections," July 5, 2012, http://www.snl.com and Ingrid Lunden, "ComScore: US Smartphone Penetration 47% In Q2; Android Remains Most Popular, But Apple's Growing Faster," *Tech Crunch*, August 1, 2012, http://techcrunch.com/2012/08/01/comscore-us-smartphone-penetration-47-in-q2-android-remains-most-popular-but-apples-growing-faster/.

that allow consumers to stream popular broadcast content from their mobile devices while YouTube, which invested $100 million in the development of exclusive content over the last year, comes pre-programmed as a standard application on most smartphones.[15] Additionally, TV Everywhere applications, available to MVPD subscribers, allow mobile access to television content. It is clear that mobile devices are becoming increasingly important for both established and independent content creators.

Unfortunately the data plans currently offered, particularly by market leaders AT&T and Verizon, discourage video viewing through low data caps and high prices. As such, consumers are deprived the potential benefit of an additional video distribution platform. AT&T and Verizon advertise 4G and LTE high speed internet technology but their data plans make it nearly impossible for consumers to take advantage of videos and other products that would benefit from such high speeds. For example, AT&T offers 3-5GB monthly plans which cost $10 per GB of data.[16] According to the company's own data calculator, a consumer would need almost 10GB of data to watch 30 hours of HD video per month.[17] With a $10 per GB overage fee, consumers would have to pay $100 per month for just an hour of daily video consumption. AT&T's shared data plan is even more expensive, charging $120 per month for 10GB of data plus a monthly fee for each device.[18] Verizon Wireless's most robust data plan costs $110 for 20GB of data per month, with $15 per GB in overage fees. The plan also requires a $10 monthly fee per tablet. However, Verizon's data calculator estimates that an hour of streaming HD video uses 1GB of

[15] Laurie Sullivan, "YouTube Invests $100 Million in Original Programming," *MediaPost News*, January 16, 2012, http://www.mediapost.com/publications/article/165755/youtube-invests-100-million-in-original-programmi.html#axzz2CiLhOl7i.
[16] AT&T, "Individual Data Device Plans," AT&T Website, http://www.att.com/shop/wireless/plans/dataplans.html, accessed November 26, 2012.
[17] AT&T, "Data Calculator," AT&T website, http://www.att.com/att/datacalculator/#fbid=gjw3Et1PPgg, accessed November 16, 2012.
[18] AT&T, "AT&T Mobile Share Data Device Plans," AT&T website, http://www.att.com/shop/wireless/plans/mobilesharedata.html, accessed November 16, 2012.

data, which means that one hour of HD video viewing per day would cost $270 per month.[19] Verizon's most affordable data plan charges $30 per month for 4GB of data, which provides little opportunity for mobile video consumption. As wireless providers have acquired spectrum and invested in network upgrades, data has become more expensive to the consumer, not less. This fact suggests that there is not enough competition to incentivize wireless providers to offer affordable data plans.

As the Commission noted in the annual wireless report, Verizon and AT&T hold the vast majority of the spectrum below 1GHz that is suitable for mobile broadband, and Verizon has recently acquired more spectrum in its transaction with SpectrumCo.[20] This has created a spectrum gap that provides AT&T and Verizon with a significant advantage over the competition. With control over this key input, these companies have the ability to keep data prices high, depriving consumers of affordable mobile broadband. AT&T and Verizon have the added incentive to keep prices high and reduce competition between mobile and wired broadband because they are among the top providers of high speed data to homes.

The realities of this market make it critical for the FCC to revisit its spectrum holding policies and adjust practices to enhance competition. While AT&T and Verizon will assert that they need as much spectrum as possible to serve their customers, the FCC cannot ignore the competitive needs of the market. Both AT&T and Verizon hold vastly more spectrum than their competitors and even though they advertise 4G and LTE networks, the cost of using this technology for video or other services that would benefit from such technology is too high. There

[19] Verizon Wireless, "Data Calculator," Verizon Wireless Website, http://www.verizonwireless.com/b2c/splash/dataShareCalculator.jsp?popup=true?popup=true, accessed November 16, 2012.

[20] FCC, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Services*, 15th Report, WT Docket 10-133, 2011, ¶ 299.

are other ways for wireless providers to increase the efficiency and capacity of their networks, but acquiring spectrum is the only way to foreclose competition.

IV. Spectrum Limits are Necessary and Must Account for Qualitative Differences in Spectrum

Spectrum is a necessary input for wireless phone and data service providers. While the government has increased the amount of spectrum available for wireless services, there remains a finite amount. The Commission's policy for spectrum holdings can play an integral role in promoting competition in the wireless market. The Commission's first step must be to develop a mechanism to appropriately weight spectrum based on its suitability for mobile voice and broadband services. For example, lower frequency spectrum is the most valuable spectrum available for mobile broadband use because it allows signals to travel longer distances, penetrate buildings and requires fewer cell tower. A cell tower in the lower 700 MHz range will cover 100 meters whereas four towers are required to cover 100 meters in the higher 1.9 GHz range. Because the current spectrum screen process does not recognize such differences, AT&T and Verizon have been able to acquire the majority of lower frequency spectrum best suited for mobile broadband, to the detriment of competition. The development of a weighting mechanism would represent a significant improvement to the FCC's current screen of 1/3 of available spectrum because it would limit further aggregation of such valuable spectrum, making room for more competition.

V. Relevant Markets

Product Market

In the *NPRM* the Commission notes that the intended relevant product market for reviewing spectrum is mobile telephony and data. While we agree that this remains the relevant

product market because so many consumers purchase voice and data plans in combination and smartphones use continues to expand, we also suggest that the Commission consider reviewing the submarket of mobile data services. With the growth of tablets and mobile computing, companies are increasing their data-only offerings. In addition, the demand for spectrum is driven by the growth of wireless data services. While the cost of mobile phone calls has fallen, mobile data has become more expensive as companies have ended unlimited data plans, replacing them with plans that offer low data caps or high prices for more data. We suggest the Commission review spectrum being used for mobile data and consider how aggregation policies affect this market.

Geographic Market

The Commission has previously analyzed the competitive implications of spectrum transactions at both the local and national level. In the Verizon-SpectrumCo transaction the Commission held that most consumers purchase and use mobile service in the cellular market area where they live and that service from distant locations was not a good substitute.[21] In this way, providers have the local market power to establish pricing plans and service levels.

While carriers have the power to affect local market conditions, the Commission has also found that most pricing and service decisions take place at the national level. From the consumer perspective, the Commission finds that national coverage is a more important attribute then local service characteristics. Likewise, spectrum aggregation by the national carriers can foreclose competitors, including local carriers, from entering the market. National footprints allow the

[21] *Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent to Assign AWS-1 Licenses*, Memorandum Opinion and Order, FCC 12-95, ¶56 (rel. August 23, 2012) and *Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorization*, Order, WT Docket 11-18, 26 FCC Rcd 17604-05 ¶34.

larger carriers to raise prices unilaterally, affecting both consumers and competitive mobile providers.[22]

The WGAW supports the Commission's dual-market analysis of competition. In the Verizon-SpectrumCo Order, the Commission found that the transaction would allow Verizon to accumulate spectrum in a majority of local markets across the country, potentially affecting pricing at both the local and national level. [23] Because the Commission will potentially reclaim enough spectrum in the upcoming reverse auction to create a nationwide license, it is particularly important that the Commission's competitive analysis continue to examine local and national effects of spectrum aggregation.

VI. Conclusion

The growth of wireless services and tablets optimized for video consumption holds great promise for the development of a competing video delivery platform. However, the lack of competition among mobile providers and with wired broadband providers raises the possibility that this promise will remain unrealized. Spectrum, as a key input for the wireless telephone and data services industry, must be allocated to enhance competition and prevent AT&T and Verizon from dominating the market to the detriment of consumer choice and innovation. As such, we ask the FCC to revise its spectrum holding policies to account for important qualitative differences in spectrum to prevent control of the most valuable spectrum by AT&T and Verizon. Improving spectrum aggregation policies will help promote the development of a more competitive wireless industry.

[22] *AT&T-Qualcomm Order* ¶35.
[23] *Verizon-SpectrumCo Order*, FCC 12-95, ¶58.